APPENDIX "A"

IN THE SUPREME COURT OF IOWA
STATE OF IOWA,
Appellee,

vs.

ARNOLD PAUL TRYON,
Appellant.

Order for Hearing

The application of the above appellant filed here June 26, 1969 for leave to take delayed appeal is hereby set for oral argument on Friday, July 18 at 10:00 A.M. in the consultation room of this court at the Statehouse in Des Moines.

DONE this 3rd day of July; 1969.

Supreme Court of Iowa
By /s/ T. G. Garfield
Chief Justice

Copies mailed out.

FINAL ORDER

Application for delayed appeal hereto considered and denied this 18th day of July, 1969.

/s/ T. G. Garfield
Chief Justice

Becker, J., Dissents from this order.
(Attys. notified.)

APPENDIX "B"

IN THE DISTRICT COURT OF IOWA,
IN AND FOR DICKINSON COUNTY

STATE OF IOWA,
Plaintiff,
vs.
ARNOLD PAUL TRYON,
Defendant.

No. 1985 Criminal

Notice of Appeal

COMES NOW the defendant, Arnold Paul Tryon, and in furtherance of Section 793.4 of the Code of Iowa (1966) hereby gives notice to the State of Iowa, through the County Attorney of Dickinson County, of the taking of an appeal from the jury verdict rendered in this Court.

I hereby state that I have caused this Notice of Appeal to be filed with the Clerk of this Court and that I have caused a true copy of this Notice of Appeal to be served upon the County Attorney of Dickinson County.

O'Brien & Galvin
By /s/ Donald E. O'Brien
Donald E. O'Brien
916 Grandview Blvd.
Sioux City, Iowa
Attorneys for defendant

I hereby acknowledge receipt of the Notice of Appeal filed in this case.

/s/ David J. Stein
David J. Stein
County Attorney

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Appellee,

vs.

ARNOLD PAUL TRYON,

Appellant.

Criminal No. .....

Motion to Dismiss

COMES NOW the appellee by its attorneys, Richard C. Turner, Attorney General of Iowa, and David A. Elderkin, Assistant Attorney General, and moves the Court to summarily dismiss the appeal in the above captioned case for the following reasons:

1. A jury verdict of guilty of the crime of resisting execution of process in violation of Section 742.1 of the 1966 Code of Iowa was returned against the defendant on March 6, 1969. Pursuant thereto final judgment of conviction was entered by the court on March 10, 1969. A purported notice of appeal was then prepared and signed by his attorney, Donald E. O'Brien of Sioux City, and filed with the Dickinson County District Court Clerk on March 12, 1969. It reads in pertinent part as follows:

> "COMES NOW the defendant, Arnold Paul Tryon, and in furtherance of Section 793.4 of the Code of Iowa (1966) hereby gives notice to the State of Iowa, through the County Attorney of Dickinson County, of the taking of an appeal from the jury verdict rendered in this Court."

2. Section 793.2 of the 1966 Code of Iowa provides that "An appeal can *only* be taken from the final judgment. . . ." As set forth in *State* v. *Klinger*, 259 Iowa 381, 144 N.W.2d 150, "final judgment" in a criminal case means the sentence; the sentence is the judgment. The verdict of the jury obviously is not the sentence and thus an appeal can-

not be taken therefrom. 24 C.J.S., Criminal Law, §1653, and authorities cited. See *State* v. *Auman*, No. 53606, dismissed April 7, 1969; *State* v. *Bean*, No. 52955, dismissed May 5, 1969; *State* v. *Meyers*, No. 53614, dismissed May 5, 1969.

We therefore submit that this Court did not acquire jurisdiction of the instant purported appeal and we respectfully move that it be summarily dismissed.

Respectfully submitted,

Richard C. Turner
Attorney General of Iowa
By /s/ David A. Elderkin
Assistant Attorney General
State House, Des Moines, Iowa
Attorneys for Appellee

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Appellee, vs. ARNOLD PAUL TRYON, Appellant.	}	**Criminal No.**

Resistance to Motion to Dismiss

COMES NOW the appellant by his attorney Donald E. O'Brien of O'Brien and Galvin and in resistance to the Motion to Dismiss states as follows:

That this is a meritorious, active appeal; that the appellant strenuously desires to pursue this appeal.

The motion to dismiss proves only one thing; that is, that the attorney for the appellant used the wrong phrasing in the notice of appeal; the case was completed and

sentence pronounced on the same day; this is in fact an appeal from the final judgment despite any erroneous use of words by the appellant's attorney.

The case of *State* v. *Klinger*, 259 Iowa 381, 144 N.W.2d 150, is *not* in point.

There was no final judgment in this case, it was appealed on the defendant's motion to suppress evidence made during pre trial proceedings and this Court held only that such a motion was not appealable.

This is not our case and the wording cited by the appellee from that case can not be controlling.

The C.J.S. (Criminal Law Section 1653), does not fit our situation either. Looking first at C.J.S. Criminal Law Section 1648 at page 1001, it states,

> "It is a prerequisite of error or appeal that judgment be rendered and entered. Arnold Paul Tryon *did* have judgment rendered and entered against him."

At Section 1649, page 1004 of the same treatise, it states,

A sentence is ordinarily a prerequisite to an appeal. Arnold Paul Tryon the appellant *here* was sentenced.

This then brings us to Section 1653 at page 1014, relied on by the appellee, where it says,

"An appeal can not be taken from the verdict." This is true. we did not intend to appeal from the verdict and only appealed *after* judgment was entered and sentence pronounced.

There is at most here, a technical error, a misstatement in the notice by the appellant's attorney. This is not fatal.

Section 793.18 of the Code of Iowa states,

> "If the appeal is taken by the defendant, the supreme court must examine the record, without regard to technical errors or defects, which do not affect the substantial rights of the parties, etc."

This is what should happen here. This appellant should not be barred by a technicality caused by his attorney.

In *Ford* v. *State*, 258 Iowa 137, 138 N.W.2d 116, this Court said,

> "The defendant is entitled to an actual appellate determination of the merits of his original conviction according to the procedure prevailing in this state in ordinary cases."

I feel sure that this Court would not deny an appellant this right because of a "goof" by his attorney.

Respectfully submitted,

By /s/ Donald E. O'Brien
O'Brien and Galvin
916 Grandview Blvd.

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,
Appellee,
vs.
ARNOLD PAUL TRYON,
Appellant.
No. 53584

Order

The motion to dismiss the above entitled appeal filed by the State of Iowa is sustained. Appeal dismissed.

Done this 9th day of June, 1969.

(Sgd.) T. G. Garfield
Chief Justice—Iowa Supreme Court

Copies mailed to Donald E. O'Brien, 916 Grandview Blvd., Sx. Cty. David A. Elderkin, Asst. Atty. General.

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,
Appellee,
vs.
ARNOLD PAUL TRYON,
Appellant.
Criminal No. .....

Application for Leave to Take Delayed Appeal and Request for Leave to Present Oral Argument

COMES NOW Arnold Paul Tryon, Appellant, and respectfully makes application for leave to take a delayed appeal and further makes a request for leave to present oral argument.

In furtherance of this application, the Appellant sets out the following facts:

1) That Arnold Paul Tyron was charged by Information with the crime of resisting execution of process in violation of Section 742.1 of the Code of Iowa. That said charge was filed on the 11th day of September, 1968 in the District Court of Iowa in and for Dickinson County, at Spirit Lake, Iowa.

2) That he pled not guilty to the charge and was tried by a jury and a verdict of guilty was returned on March 6, 1969.

3) That on March 10, 1969, sentence was pronounced by the Court as follows: a fine of $200.00 plus the costs of this action.

That at said time and place the defendant, Arnold Paul Tryon, advised his counsel that he desired to appeal the final judgment. Counsel agreed that there was substance and merit in such an appeal by reason of errors committed prior to and during the course of the trial and the circumstances warranted an appeal.

4) That counsel for Arnold Paul Tryon on March 12, 1969, attempted to effect a Notice of Appeal in the following words:

"COMES NOW the defendant, Arnold Paul Tryon, and in furtherance of Section 793.4 of the Code of Iowa (1966) hereby gives notice to the State of Iowa, through the County Attorney of Dickinson County, of the taking of an appeal from the jury verdict in this Court."

5) That a motion to dismiss the appeal was filed on March 15, 1969, and on the same day notice was given by this Court that said motion would be submitted to the Court without argument on June 9, 1969.

6) That thereafter on June 6, 1969, this appellant filed a "Resistance to Motion to Dismiss" in this Court, a

copy of which is attached hereto marked Exhibit "A" and is by reference made a part hereof.

7) That on June 9, 1969, this Court entered the following Order: "The Motion to Dismiss the above entitled appeal filed by the State of Iowa is sustained. Appeal dismissed."

8) Counsel for the defendant-appellant, Arnold Paul Tryon, has good and sufficient cause to believe prejudicial error was committed and reasonable cause to believe an appeal would result in a reversal.

This situation has not arisen because of any dereliction or neglect by the defendant-appellant. In the interest of fairness and justice he should be accorded the right to appeal.

Respectfully a request for leave to present oral argument is hereby made.

The brief in the Resistance attached hereto is respectfully called to the Court's attention.

Respectfully submitted,

O'Brien & Galvin
By /s/ Donald E. O'Brien
Donald E. O'Brien
916 Grandview Blvd.
Sioux City, Iowa
Attorneys for Defendant-Appellant

The undersigned, Arnold Paul Tryon, appellant, states that the statements contained in this Application are true and correct and I hereby join in said application.

/s/ Arnold Paul Tryon
Arnold Paul Tryon

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Appellee, vs. ARNOLD PAUL TRYON, Appellant.	}	Criminal No. 53584

Resistance to Application for Leave to Take Delayed Appeal

COMES NOW the appellee by its attorneys, Richard C. Turner, Attorney General of Iowa, and David A. Elderkin, Assistant Attorney General, and makes resistance to appellant's Application for Leave to take Delayed Appeal as follows:

1. That defendant's Application is little more than a rehash of his resistance to our motion to dismiss the above entitled appeal which was sustained on June 9, 1969. No new arguments or authorities are presented and there is and has been no allegation that the defendant was prevented by a wrongful act or omission by the State from properly perfecting his notice of appeal. Our thoughts and authorities on the matter, including three recent appeals which were dismissed on the same ground as the instant case, were set forth in our aforementioned motion to dismiss and thus were before this Court for its consideration prior to the dismissal of the appeal. They need not be reiterated herein.

We therefore submit for the second time that an appeal cannot be taken from the verdict of the jury and we respectfully request that the instant Application be denied.

Respectfully submitted,

Richard C. Turner
Attorney General of Iowa
By /s/ David A. Elderkin
David A. Elderkin
Assistant Attorney General

IN THE SUPREME COURT OF IOWA

ARNOLD PAUL TRYON, Appellant, vs. STATE OF IOWA, Appellee.	}	**Criminal No. 53584**

Notice of Appeal to the Supreme Court of the United States

I. Notice is hereby given that Arnold Paul Tryon, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order denying the application for a delayed appeal entered on the 18th day of July, 1969.

This appeal is taken pursuant to 28 USCA 1257 (2).

Appellant was convicted of the crime of resisting execution of process in violation of Section 742.1 of the Code of Iowa, 1966, as amended; was fined the sum of Two Hundred Dollars and costs and is presently enlarged on a bail in the sum of $1,000.00.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

All filings including but not limited to pleadings, brief, and orders. It being understood that there is no transcript on file herein.

III. The following questions are presented by this appeal:

Can the Supreme Court of Iowa by strict, technical construction of Sections 793.2 and 793.4 of the Code of Iowa

deprive this appellant of his constitutional rights to appeal and be afforded due process.

O'Brien & Galvin
By /s/ Donald E. O'Brien
Donald E. O'Brien
916 Grandview Blvd.,
Sioux City, Iowa
Attorneys for Arnold Paul Tryon, Appellant

Record

There was no record in this cause except the orders of Court and pleadings attached to this Jurisdictional Statement; further the Clerk of the Supreme Court of Iowa has heretofore forwarded all said orders and pleadings to the Clerk of the Supreme Court of the United States.

APPENDIX "C"

Section 793.2 of the Code of Iowa, 1966, states as follows:

793.2 Time of Taking—From Final Judgment Only.

An Appeal can only be taken from the final judgment and within sixty days thereafter.

Section 793.4 of the Code of Iowa, 1966, states as follows:

793.4 Taking and Perfecting.

An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the District Court at the time of the rendition of the judgment, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof indorsed thereon or annexed thereto.